

MARIA GUADALUPE REYES GAONA, §
TOMAS TORRES CURIEL, ANDRES §
PONCE QUINTERO, JORGE BECERRA §
ORTIZ, FRANCISCO CARBAJAL, and §
MARCOS JOSE BARBOZA VALLENILLA, §

VS.

Respondents.

CIVIL ACTION NO. SA-20-CA-473-FB

Before the Court are: (1) the Report and Recommendation of United States Magistrate Judge filed September 11, 2020 (docket #47); (2) Petitioners' Objections to the Report and Recommendation filed September 25, 2020 (docket #49); (3) Respondents' Response to Objections to Magistrate's Report and Recommendation filed October 2, 2020 (docket #51); Petitioners' Motion for Leave to File a Reply to Respondents' Response to Petitioners' Objections to the Report and Recommendation filed October 9, 2020 (docket #52); and (4) Respondents' Response to Motion for Leave filed October 16, 2020 (docket #53). Respondents advise in their response that they do not oppose petitioners' motion for

leave to file a reply. Therefore, Petitioners' Motion for Leave to File a Reply to Respondents' Response to Petitioners' Objections to the Report and Recommendation (docket #52) is GRANTED such that the Clerk shall file Petitioners' Reply to Respondents' Response to Petitioners' Objections to the Report and Recommendation attached to the motion for leave at docket #52-1.

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, United States Magistrate Judge Richard B. Farrer explains that challenges to the condition of confinement are not cognizable in a habeas proceeding and petitioners' procedural due process claims fail for lack of subject matter jurisdiction and/or failure to state a claim. Report, docket #47 at pages 4-8 (citations, footnotes, and docket references omitted). As a result, the recommendation is made that: (1) Respondents' Motion to Dismiss Amended Petition (docket #14) should be GRANTED and this case should be dismissed for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted; (2) Petitioners' Motion for Temporary Restraining Order (docket #16) which the Court converted to a Motion for Preliminary Injunction (*see* docket #39) should be DISMISSED AS MOOT and also for failure to demonstrate a likelihood of success on the merits;

and (3) Petitioners' Motion for Expedited Discovery (docket #40) should similarly be DISMISSED AS MOOT.

The Court has reviewed petitioners' objections to the Report and Recommendation and their reply and has conducted a de novo review of the Magistrate Judge's Report and Recommendation. The Court finds the petitioners' objections without merit. Accordingly, the Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation (docket #47) and incorporates herein the arguments and authorities presented in Respondents' Response to Objections to Magistrate's Report and Recommendation (docket #51). The Court also accepts, approves and adopts the following statements contained in the Report:

In making this recommendation, the Court pauses to note that it is not without sympathy for Petitioners and their current predicament. COVID-19 "presents an extraordinary and unique public-health risk to society," which has required "unprecedented protective measures" by local, state, and national authorities to limit the spread of the virus. *Sacal-Micha v. Longoria*, ___ F. Supp. 3d ___, 2020 WL 1518861, at *6 (S.D. Tex. Mar. 27, 2020). Moreover, the Court acknowledges the difficulties Petitioners face in bringing a Bivens action here. But the Court cannot assume jurisdiction where none exists or grant relief when Petitioners have failed to state a claim. And the lack of a judicial remedy here doesn't nullify Respondents' independent duty to uphold the Constitution. *See Loa-Herrera v. Trominski*, 231 F.3d [984,] [] 991 [(5th Cir. 2000)].

Report, docket #47 at page 10.

Therefore, the Report and Recommendation shall be accepted pursuant to 28 U.S.C. § 636(b)(1) such that: (1) Respondents' Motion to Dismiss Amended Petition (docket #14) shall be GRANTED and this case shall be DISMISSED for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted; (2) Petitioners' Motion for Temporary Restraining Order (docket #16) which the Court converted to a Motion for Preliminary Injunction (*see* docket #39) shall be DISMISSED AS MOOT and also for failure to demonstrate a likelihood of success on the merits; and (3) Petitioners' Motion for Expedited Discovery (docket #40) shall be DISMISSED AS MOOT.

Accordingly, IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge, filed in this case on September 11, 2020 (docket #47) is ACCEPTED pursuant

to 28 U.S.C. § 636(b)(1) such that: (1) Respondents' Motion to Dismiss Amended Petition (docket #14) is GRANTED and this case is DISMISSED for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted; (2) Petitioners' Motion for Temporary Restraining Order (docket #16) which the Court converted to a Motion for Preliminary Injunction (*see* docket #39) is DISMISSED AS MOOT and also for failure to demonstrate a likelihood of success on the merits; and (3) Petitioners' Motion for Expedited Discovery (docket #40) is DISMISSED AS MOOT. Motions pending, if any, are also DISMISSED, and this case is now CLOSED.

It is so ORDERED.

SIGNED this 22nd day of October, 2020.



FRED BIERY
UNITED STATES DISTRICT JUDGE